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Programme budget for the biennium 2004-2005

Unforeseen and extraordinary expenses

Report of the Secretary-General

Summary

In accordance with General Assembly resolution 58/273 of 23 December 2003, the Secretary-General is authorized to enter into commitments to meet unforeseen and extraordinary expenses arising either during or subsequent to the biennium 2004-2005, without the concurrence of the Advisory Committee on Administrative and Budgetary Questions under certain conditions and monetary limits, namely: (i) expenses relating to the maintenance of peace and security; (ii) expenses certified by the President of the International Court of Justice; and (iii) expenses required for inter-organizational security measures.

In line with the recommendation of the Advisory Committee contained in its report on the second performance report of the Secretary-General on the programme budget for the biennium 2002-2003 (A/58/604, para. 9), in the present report, the Secretary-General reviews the adequacy of the provisions of the resolution on unforeseen and extraordinary expenses relating to expenses certified by the President of the International Court of Justice and recommends that the Assembly approve the Secretary-General's proposal contained in the present report to change the ceiling for expenses that may be certified by the President of the Court without the prior concurrence of the Advisory Committee, with effect from the biennium 2006-2007, and approve the proposal to maintain an amount of $400,000 in the regular budget of the Court to accommodate the recurring requirements for ad hoc judges, with effect from the biennium 2006-2007, to be included in the proposed programme budget for the biennium 2006-2007.

* A/59/50 and Corr.1.

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I. Introduction

1. In accordance with Article 17 of the Charter of the United Nations, the General Assembly is vested with the authority to consider and approve the budget of the Organization. The Assembly's biennial resolution on unforeseen and extraordinary expenses makes provision for the Secretary-General, under certain conditions, to enter into commitments for activities of an urgent nature without reverting to the Advisory Committee on Administrative and Budgetary Questions and the Assembly for approval of the required resources. The most recent resolution on unforeseen and extraordinary expenses is 58/273 of 23 December 2003.

2. The present report has been prepared in response to the recommendation of the Advisory Committee on Administrative and Budgetary Questions contained in its report on the second performance report of the Secretary-General on the programme budget for the biennium 2002-2003 (A/58/604, para. 9). In his report, the Secretary-General reviews the use of the provisions of the resolution regarding expenses certified by the President of the International Court of Justice and proposes changes to the designated levels.

II. Current procedures

3. Under the provisions of paragraph 1 (b) of resolution 58/273, the Secretary-General is authorized to enter into such commitments as the President of the International Court of Justice certifies are occasioned by:

(a) The designation of ad hoc judges (Statute of the International Court of Justice, Article 31), not exceeding a total of $330,000;

(b) The calling of witnesses and the appointment of experts (Statute, Article 50) and the appointment of assessors (Statute, Article 30), not exceeding a total of $50,000;

(c) The maintenance in office for the completion of cases of judges who have not been re-elected (Statute, Article 13, para. 3), not exceeding a total of $40,000;

(d) The payment of pensions and travel and removal expenses of retiring judges and travel and removal expenses and installation grant of members of the Court (Statute, Article 32, para. 7), not exceeding a total of $410,000;

(e) The work of the Court or its Chambers away from The Hague (Statute, Article 22), not exceeding a total of $25,000.

4. Recourse to these provisions during each calendar year of the biennium is reported to the General Assembly in the context of the first and second performance reports on the programme budget, at which time appropriations for the commitments are requested. As is the practice, following the appropriation granted in the first year, the limit for the second year of the biennium reverts to the original levels authorized by the Assembly under the resolution. That is, for each year of the biennium, the amount that the President of the Court may certify remains fixed at the dollar level reflected in the resolution.

5. Should the level of requirements certified by the President of the Court, as reflected in the provisions of paragraph 1 (b) of the resolution on unforeseen and

extraordinary expenses, be exhausted during either year of the biennium, such requirements would be submitted to the Advisory Committee on Administrative and Budgetary Questions for it to act upon under the same resolution.

III. Commitments authorized by the President of the International Court of Justice relating to certain expenses of the Court

6. On the basis of changing requirements in the activities of the International Court of Justice, the specific expenses and corresponding resource ceilings certified by the President of the Court under the resolution on unforeseen and extraordinary expenses have varied from biennium to biennium.

7. The categories of expenses that may be certified by the President of the Court have remained relatively constant in successive resolutions on unforeseen and extraordinary expenses, with the exception of those relating to expenses of the Court occasioned by (a) the maintenance in office for the completion of cases of judges who have not been re-elected and (b) the payment of pension and removal expenses of retiring judges, and travel and removal expenses and installation grant of members of the Court. These provisions were excluded from the resolution for the biennium 1986-1987 but were subsequently reinstated for the biennium 1994-1995 and have continued to be included in successive resolutions on the subject.

8. The magnitude of expenses certified against each category of the provision of the resolution has varied from one biennium to the next, depending on the level of the activities of the Court. However, no expenses or limited expenses have been certified against the following three provisions relating to (a) the calling of witnesses and the appointment of experts, (b) maintenance in office for the completion of cases of judges who have not been re-elected and (c) the work of the Court or its Chambers away from The Hague. Moreover, for the biennium 2004-2005, the term of office will not end for any of the 15 existing elected judges and, based on current indications, it is not anticipated that the requirements under the provision for "maintenance in office" would be exceeded. Accordingly, no change is proposed at this time to the current contingency ceiling amounts of $50,000, $40,000 and $25,000 identified in paragraph 1 (b) (ii), (iii) and (v), respectively, of resolution 58/273.

9. At the same time, no change in the provisions of paragraph 1 (b) (iv) of the resolution is proposed. Under these provisions, the President is authorized to incur expenditures for the payment of pensions, repatriation and travel and removal expenses of retiring judges and for assignment grants and travel and removal expenses for new members of the Court up to a ceiling of $410,000.

10. This component of the resolution, after having been excluded from the resolution for the biennium 1986-1987, was reinstated in the resolution on unforeseen and extraordinary expenses by a decision of the General Assembly in its resolution 48/229 of 23 December 1993. At its reintroduction, the ceiling was set at $180,000. This amount was subsequently increased by the Assembly in its resolution 54/252 of 23 December 1999 to $410,000, which has remained unchanged in successive resolutions.

11. With the exception of the year 2003, when the ceiling of $410,000 was exceeded by $197,400 and approval was accordingly sought in the context of the second performance report of the Secretary-General for the biennium 2002-2003 (A/58/558 and Add.1 and Corr.1), the provision has thus far not been exceeded.

12. In line with the cyclical election or re-election of judges, the term of office of five newly elected or re-elected members of the Court commenced in 2003, a further five judges will be newly elected or re-elected for terms of office commencing in February 2006 and the remaining five judges will be newly elected or re-elected for terms of office commencing in February 2009. In this connection, this component of the resolution may be used and, as was the experience in 2003, the ceiling may be exceeded for the year 2006 and subsequently in 2008 to coincide with circumstances of the elected or re-elected judges. However, given the less frequent and definite use of the provision and, as indicated in paragraph 5 above, the fact that procedures are in place to address requirements exceeding the provisions contained in the resolution, no change in the ceiling of $410,000 is proposed at this time.

13. With respect to paragraph 1 (b) (i) of the resolution, relating to the designation of ad hoc judges, over the period from biennium 1990-1991 to biennium 2002-2003, two increases to the level under this category were proposed and approved by the General Assembly, first in its resolution 48/229, when it was raised from $250,000 to $300,000, and subsequently, in its resolution 54/252, when it was raised from $300,000 to the current level of $330,000.

14. The Court consists of 15 members elected by the General Assembly and the Security Council for a term of nine years. However, in accordance with Article 31 of the Statute of the Court, a party to a dispute before the Court may choose an ad hoc judge whenever a judge of its nationality is not included on the bench. Consequently, the exact expenditure that will arise against this provision is not fully predictable, with the total number of ad hoc judges in any one year varying according to the circumstances. In the consideration of some cases, no ad hoc judges may be required, while in others, one or more ad hoc judges may have been chosen. However, as the table below indicates, there has been a continuous use of the provision made for the past years. In particular, the table reflects the changes in the number of ad hoc judges and associated expenditure since the ceiling in the resolution was last increased in 1999.

Year	*Number of ad hoc judges*	*Expenditures (Thousands of United States dollars)*[a]
1999	16	208.5
2000	9	262.1
2001	10	202.4
2002	13	456.8
2003	15	298.1
2004 (as at 1 April)	2	87.9

[a] Rounded.

15. Payment under the resolution is dependent not only upon the duration of the cases being heard (the docket of the Court), but also upon the complexity of the cases and the volume of submissions (requirement for preparatory study) by the

parties. In accordance with Article 32, paragraph 4, of the Statute of the Court, ad hoc judges "shall receive compensation for each day on which they exercise their functions". In paragraph 3 of its resolution 48/252 A of 26 May 1994, the General Assembly decided that, with effect from 1 January 1994, the ad hoc judges referred to in Article 31 of the Statute should receive for each day they exercise their functions one three-hundred and sixty-fifth of the annual salary payable at the time to a member of the Court. In its review of those arrangements in 1995 and 1998, the Assembly did not propose a change to the arrangement. Moreover, in its resolution 56/285, the Assembly decided that the conditions of service for the members of the International Court of Justice and the judges and ad litem judges of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda should be reviewed at its fifty-ninth session.

16. On the basis of a review of expenditures incurred for the period 1999 through 2004, it may be noted that the payments have varied during this period from the lowest point of $202,400, in 2001, to the peak to date of $456,800, in 2002. In view of the consistency in the use of this provision and of the fact that ad hoc judges will continue to be utilized on a consistent basis, it is proposed that a continuing provision of $400,000 be established in the regular budget of the Court in the context of the proposed programme budget for the biennium 2006-2007 and that the ceiling under this component of the resolution for unforeseen and extraordinary expenses for the biennium 2006-2007 be adjusted to $200,000.

17. **On the basis of the review contained in the present report, while no change is proposed for the biennium 2004-2005, changes are proposed by the Secretary-General effective in the biennium 2006-2007, as summarized below.**

Paragraph in resolution 58/273		*Limit, as contained in resolution 58/273*	*New proposed limit (2006-2007)*
		(United States dollars)	
1 (b) (i)	Designation of ad hoc judges (Statute, Article 31)	330 000	200 000
1 (b) (ii)	Calling of witness and the appointment of experts (Statute, Article 50) and the appointment of assessors (Statute, Article 30)	50 000	50 000
1 (b) (iii)	Maintenance in office for the completion of cases of judges who have not been re-elected (Statute, Article 13, para. 3)	40 000	40 000
1 (b) (iv)	Payment of pensions and travel and removal expenses of retiring judges and travel and removal expenses and installation grant of members of the Court (Statute, Article 32, para. 7)	410 000	410 000
1 (b) (v)	Holding of sessions of the Court or its Chambers away from The Hague (Statute, Article 22)	25 000	25 000

IV. Conclusion and recommendation

18. **It is recommended that the General Assembly take note of the present report and approve the proposal of the Secretary-General contained in the report as follows:**

(a) Change the ceiling for expenses that may be certified by the President of the Court without the prior concurrence of the Advisory Committee on Administrative and Budgetary Questions, with effect from the biennium 2006-2007, as reflected in paragraph 17;

(b) Approve the proposal to maintain an amount of $400,000 in the regular budget of the Court to accommodate the recurring requirements for ad hoc judges, with effect from the biennium 2006-2007, to be included in the proposed programme budget for the biennium 2006-2007.